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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,818	11/14/2001	George Likourezos	1002 CIP II	1243

7590
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04/15/2008

EXAMINER

KESACK, DANIEL

ART UNIT	PAPER NUMBER
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3691

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/993,818	Applicant(s) LIKOUREZOS ET AL.	
	Examiner Daniel Kesack	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27, 49-54, 57 and 58 is/are pending in the application.
- 4a) Of the above claim(s) 57 and 58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 49-54 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is in response to the amendment filed January 2, 2008. Applicant's amendments have been entered, and applicant's arguments have been fully considered. Claims 1-27, 49-54, 57-58 are currently pending. The rejections are as stated below.

Election/Restrictions

2. Newly submitted claims 57 and 58 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 57 (invention II) and 58 (invention III) and pending claims 1-27, 49-54 (invention I) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination (invention II) does not require the loaning of funds that the subcombination (invention I) requires. Claim 57 recites "performing at least one payment-related activity selected from the group consisting of debiting an electronic auction payment account... and withdrawing funds... (only the

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withdrawing funds step requires the loaning of funds). The subcombination has separate utility such as loaning funds to a user when an account has insufficient funds to cover a transaction. Furthermore, the other combination (invention III) does not require the authorization step of the subcombination (invention I), and this subcombination has separate utility such as maintaining user payment accounts.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 57 and 58 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3, 4, 7, 11-14, 16, 19, 20, 23, 25, 27, and 50-54 are rejected under 35 U.S.C. 102(e) as being anticipated by Dent et al., U.S. Patent Application Publication No. 2002/0026396.

Claims 1, 3, 14, 19, 25, 27, Dent discloses a system and method for facilitating personal electronic financial transactions, comprising:

receiving authorization from a user to use a payment source corresponding to the user for effecting at least one payment, and to loan funds to the user if the payment source has insufficient funds (paragraphs 123, 124);

determining if the payment source corresponding to the user has sufficient funds for effecting the at least one payment (figure 18, #1806);

loaning funds for effecting the at least one payment if the payment source corresponding to the user has insufficient funds for effecting the at least one payment (paragraph 102).

Claims 4, 20, Dent teaches the step of loaning funds occurring automatically if the user's designated account has insufficient funds (paragraph 102).

Claims 7, 11, 16, 23, Dent teaches the payee receiving funds from loaned to the user from the financial institution (paragraphs 110, 111). Examiner notes that Dent also teaches the FSC may also serve as the financial institution (paragraph 77).

Claims 12, 13, Dent teaches transferring the funds loaned to at least one account (paragraph 123), and that the at least one account may include an account corresponding to an operator of the electronic auction system (escrow – paragraph 125), and the account corresponding to another user of the auction website (paragraph 123).

Claims 50-54, Dent teaches the invention substantially as claimed including not providing for any interaction between the user and another user, not receiving instructions from another user. Examiner notes that the claim limitations are negative limitations, and are generally not given weight for patentability over the prior art. In the present case, the teachings of Dent do not require any of the negatively claimed limitations, and therefore do not distinguish the claimed invention over Dent.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 2, 5, 6, 8-10, 17, 18, 21, 22, 24, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dent.

Claims 2, 15, and 22, Dent fails to specifically teach charging the user of the electronic auction website interest for the funds loaned. However, since Dent teaches the loaning of funds to the user, it would be an obvious next step to charge the user interest for the funds loaned. Charging interest to a borrower of funds is known, and is commonly provided as compensation to the lender of the funds in exchange for lender not having access to the loaned funds.

Claims 5, 6, and 21, Dent fails to specifically teach determining whether the user of the electronic auction web site owes funds greater than a predetermined amount, and preventing the user from effecting a payment if the user owes funds greater than the predetermined amount. However, Dent teaches checking a line of credit (paragraph 102), and this process is known to be performed when checking a line of credit. According to Dent, the line of credit may be based on a T-score, which quantifies the

user's credit worthiness (paragraph 103). It is well known in the art of financial lending that one's credit worthiness is determined, at least in part, by how much credit one is currently being extended.

Claims 8, 9, 10, 17, 18, 24, Dent fails to teach charging fees to the user for mediating the transfer of funds, and charging the financial institution for transferring funds on behalf of the user.

Official Notice was taken in the previous office action that charging fees for services rendered while transferring money between accounts and mediating transactions between parties is old and well known in the art. Furthermore, origination fees are old and well known, in which the party which initiates the loan (in this case, the payment system) receives a fee or percentage of the loaned amount as compensation. Since Applicant did not adequately traverse Examiner's Official Notice, the common knowledge or well known in the art statement is taken to be admitted prior art. See MPEP 2144.03(C). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Dent to include these fees because each intermediary participant in the transaction desires to derive a revenue stream from taking part in the transaction, and one would expect these fees to serve as the compensation.

Claim 26, Dent fails to explicitly teach deducting funds from the system account for loaning to the user. However, as noted above regarding claim 11, Dent teaches the

FSC may serve as the financial institution. In this case, it would be an obvious next step that the funds loaned to the user would be deducted from an account within the system when the funds are transferred to the fund recipient (paragraphs 110, 111).

Response to Arguments

8. Applicant's arguments filed January 2, 2008 have been fully considered but they are not persuasive.

Applicant disagrees with Examiner's statement and assessment of the teachings of Dent et al. Specifically, Applicant argues that Dent does not disclose or suggest "receiving authorization by a payment system from the user of the electronic auction web site to loan funds thereto for effecting the at least one payment," as recited in claims 1, 19, and 27, and "receiving authorization from the user to use a payment source corresponding to the user for effecting the at least one payment and to loan funds to the user if the payment source has insufficient funds," as recited in claim 14. Examiner respectfully disagrees.

Applicant reproduced only a portion of the citation of Dent provided by Examiner. Furthermore, the authorization step is taught in other areas of Dent, and the citation is provided as an example only. However, as cited, paragraph 123 teaches a user authorizing payment of a bill and account selection. Paragraph 124 continues to teach

the funds being withdrawn from the user's account pursuant to the user's authorization, and extending a line of credit if there are insufficient funds, which is also inherently pursuant to user's authorization. It is obvious that a person using the system described by Dent knows the general operation of the system being used. If the user is authorizing payment from a system which loans funds to the user in the event a transaction occurs on an account with insufficient funds, it is assumed that the user is aware of the capability. When the user authorizes payment be made through said system, the user is authorizing payment, and is inherently authorizing the line of credit in the event there is insufficient funds. Examiner is of the opinion that the authorization to pay using the system of Dent is an authorization to perform the functions of the system of Dent, which includes the user authorizing the loaning of funds to the user if the payment source has insufficient funds.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Kesack whose telephone number is (571)272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Respectfully Submitted,

Daniel Kesack

April 10, 2008

/D. K./

Examiner, Art Unit 3691

/Hani M. Kazimi/

Primary Examiner, Art Unit 3691